



January 9, 2001

Ms. Jan Clark
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-0090

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142973.

The City of Houston (the “city”) received a request for the police reports of all crimes that have occurred at a particular apartment complex. You have submitted responsive police reports that the city claims are excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and have reviewed the information you submitted.

Section 552.108, the “law enforcement exception,” provides in relevant part that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if ... release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, you inform us that the information submitted as Exhibit 3 pertains to a pending case. Based on your representation and our review of the information in question, we find that its release would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1); *Houston Chronicle*

¹You also inform us that the city will release to the requestor other responsive reports that it does not believe to be excepted from disclosure.

Publ'g Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that the report submitted as Exhibit 3 is excepted from disclosure under section 552.108(a)(1).

You also raise section 552.108(a)(2), which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if . . . it is information that is excepted from [required public disclosure] deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) protects information relating to a closed investigation or prosecution that did not result in a conviction or a deferred adjudication. *See Open Records Decision No. 216* (1978) (addressing applicability of statutory predecessor to closed cases). In this instance, we understand you to state that all of the reports submitted as Exhibit 2 pertain to closed cases that did not result in a conviction or a deferred adjudication. We also understand you to state that the reports in Exhibit 4 pertain to closed cases that did not result in a conviction or a deferred adjudication, as the suspect in those cases is the subject of pending criminal charges in other cases. Based on your representations and our review of Exhibits 2 and 4, we conclude that those reports are excepted from disclosure under section 552.108(a)(2).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Section 552.108(c) requires the release of basic front-page offense and arrest information, including a detailed description of the alleged offense, even if that information is not literally located on the front page of the corresponding police report. *See Open Records Decision No. 127* at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

We further note, however, that the city must withhold some of the basic front-page information in two of the submitted reports under section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” In this instance, two of the submitted reports relate to investigations of alleged sexual assault, and therefore some of the front-page information in those reports must be withheld under section 552.101 in conjunction with the common law right of privacy. Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and the public has no legitimate interest in it. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Open Records Decision No. 339* (1982), we concluded that a sexual assault victim has a common law privacy interest that prevents disclosure of information that would identify the victim.

See also Morales v. Ellen, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information, and public did not have a legitimate interest in such information); Open Records Decision No. 393 (1983). We have marked the information that you must withhold under section 552.101 in conjunction with common law privacy.

Lastly, we also note that some of the submitted reports pertain to alleged offenses involving motor vehicles. Section 552.130 of the Government Code governs the disclosure of certain motor vehicle record information. Section 552.130 provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). In releasing basic front-page information, you also must withhold motor vehicle record information, including vehicle identification and Texas license plate numbers, in accordance with section 552.130.

In summary, the city may withhold the submitted police reports under section 552.108 of the Government Code, but must release basic front-page offense and arrest report information in accordance with section 552.108(c). However, in releasing basic information, the city must withhold information that would identify alleged sexual assault victims under section 552.101 in conjunction with common law privacy and motor vehicle record information in accordance with section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

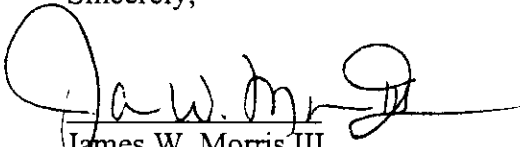
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 142973

Encl. Submitted documents

cc: Mr. Pat Sturdivant
4212 San Felipe Street #463
Houston, Texas 77027-2902
(w/o enclosures)